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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/710,845	08/06/2004	David G. Koch	YORK.US.2	4844
24111 7590 02/05/2009 MESMER & DELEAULT, PLLC 1 NEW HAMPSHIRE AVE. SUITE 125 PORTSMOUTH, NH 03801			EXAMINER BARTOSIK, ANTHONY N	
			ART UNIT 3635	PAPER NUMBER
			NOTIFICATION DATE 02/05/2009	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/710,845	Applicant(s) KOCH ET AL.	
	Examiner ANTHONY N. BARTOSIK	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/24/2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 11-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 17-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is a Non-Final rejection sent in response to Applicant's Arguments.

Response to Arguments

1. Applicant's arguments, see Remarks, filed September 24, 2008, with respect to the rejection(s) of claim(s) 1-24 have been fully considered and are persuasive.

Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of new art.

Double Patenting

2. The submission of the Broad Declaration to overcome the 35 USC § 102(e) is acknowledged and the rejection is removed.

Claim Rejections - 35 USC § 112

3. The claims previously rejected under 35 USC § 112 have been corrected and are therefore removed.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over <http://web.archive.org/web/20020602134312/www.yorkmfg.com/default.asp?linknum=27> (hereinafter “York Flashing”) in view of Healy et al. (US 3,654,765).**

6. In Re claim 1, York Flashing discloses a flashing membrane (copper layer), the flashing membrane having a first side and a second side opposite the first side, a reinforcing cloth (woven glass fabric layer) adhered to the flashing membrane first side, York Flashing discloses an upper layer of woven glass fabric, but does not disclose a wicking cloth. It is well known in the through-wall flashing art to include wicking material on top of a flashing member in order to prevent debris from blocking the path of moisture. Col. 2, Lines 31-42 of Healy et al. teach this methodology. Healy et al. teaches placing a pervious synthetic fabric material on top of a flashing member to allow water to flow through the cloth and prevent debris from blocking flow. It therefore, it would have been obvious to one skilled in the art at the time of the invention to combine the prior art elements of York Flashing and Healy et al. according to known methods to yield the predictable result of preventing debris from blocking the flow of moisture.

7. In Re claims 2, 4, and 8-10, the above combination discloses the claimed limitations.

8. In Re claims 3, 5, and 6, the combination of York Flashing and Healy et al. disclose the claimed invention except for the particulars to the dimension of the flashing

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membrane layer and wicking cloth and the weight of the reinforcing cloth. It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of design choice to have properly dimensioned both the reinforcing and wicking layers as claimed because applicant failed to state a criticality for the necessity of the limitation and the prior art of record is capable of being dimensioned to meet the limitation as claimed. See MPEP 2144.04(IV)(A).

9. In Re claim 7, Healy et al. disclose the claimed invention and teaches, suggests, and motivates the use of synthetic fabric material for the wicking cloth, however, it does not disclose one of the claimed materials. It would have been obvious to one skilled in the art at the time of the invention to have chosen one of the claimed materials since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. MPEP 2144.07.

10. In Re claim 17, York Flashing discloses a flashing membrane (copper layer), the flashing membrane having a first side and a second side opposite the first side, a reinforcing cloth (lower woven glass fabric layer) adhered to the flashing membrane first side,

a second reinforcing cloth (upper woven glass fabric layer) adhered to the flashing membrane second side.

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It is well known in the through-wall flashing art to include wicking material on top of a flashing member in order to prevent debris from blocking the path of moisture. Col. 2, Lines 31-42 of Healy et al. teach this methodology. Healy et al. teaches placing a pervious synthetic fabric material on top of a flashing member to allow water to flow through the cloth and prevent debris from blocking flow. It therefore, it would have been obvious to one skilled in the art at the time of the invention to combine the prior art elements of York Flashing and Healy et al. according to known methods to yield a predictable result.

Regarding the limitation of the wicking cloth being selected from the group consisting of polyester, polypropylene, polypropylene nylon, and polyethylene, Healy et al. disclose the claimed invention and teaches, suggests, and motivates the use of synthetic fabric material for the wicking cloth, however, it does not disclose one of the claimed materials. It would have been obvious to one skilled in the art at the time of the invention to have chosen one of the claimed materials since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. MPEP 2144.07.

11. In Re claims 18-20, the combination discloses the claimed limitations.

12. Claims 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Surlis (US 6,023,892) in view of York Flashing and Healy et al. (US 3,654,765).

13. In Re claim 21, Figure 1 of Surlis teaches an inner wall (12), an outer wall (14), and a combination through-wall masonry flashing and drainage device (20), the device (20) having a first edge and a second edge opposite the first edge,

wherein the first edge of the device (20) is secured to the inner wall (12) with the wicking cloth (32) facing up, and the second edge of the device (20) is secured beyond the outer wall (14), such that water between the inner wall (12) and outer wall (14) is drawn through a mortar joint at the base of the outer wall (14) to the outside of the outer wall (14) by the wicking action of the wicking cloth (32) without the need for vents.

Surlis does not however, teach the particulars of the claimed drainage device. York Flashing discloses a through wall drainage device comprising, a flashing membrane (copper layer), the flashing membrane having a first side and a second side opposite the first side, a reinforcing cloth (woven glass fabric layer) adhered to the flashing membrane first side. York Flashing discloses an upper layer of woven glass fabric, but does not disclose a wicking cloth. It is well known in the through-wall flashing art to include wicking material on top of a flashing member in order to prevent debris from blocking the path of moisture. Col. 2, Lines 31-42 of Healy et al. teach this methodology. Healy et al. teaches placing a pervious synthetic fabric material on top of a flashing member to allow water to flow through the cloth a prevent debris from blocking flow. It therefore, it would have been obvious to one skilled in the art at the time of the invention to combine the prior art elements of York Flashing and Healy et al. according to known methods to yield a predictable result.

Additionally, it would have been obvious to use the combined drainage device of York Flashing and Healy et al. in the manner as taught by Sourlis as a simple substitution of one known element for another to obtain a predictable result.

14. In Re claim 22, Figure 3 of Sourlis discloses the first edge being secured at a higher elevation on the inner wall (12) than the second edge that is secured to the outer wall (14).

15. In Re claim 23, Figure 3 of Sourlis discloses a horizontal concrete support upon which the inner wall (12) and outer wall (14) are supported, wherein the device (20) second edge is disposed between and beyond the outer wall (14) and concrete support.

16. In Re claim 24, In Re claim 21, Figure 1 of Sourlis teaches an inner wall (12), an outer wall (14), and a combination through-wall masonry flashing and drainage device (20), the device (20) having a first edge and a second edge opposite the first edge,

wherein the first edge of the device (20) is secured to the inner wall (12) with the wicking cloth (32) facing up, and the second edge of the device (20) is secured beyond the outer wall (14), such that water between the inner wall (12) and outer wall (14) is drawn through a mortar joint at the base of the outer wall (14) to the outside of the outer wall (14) by the wicking action of the wicking cloth (32) without the need for vents.

York Flashing discloses a drainage device comprising a flashing membrane (copper layer), the flashing membrane having a first side and a second side opposite

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the first side, a reinforcing cloth (lower woven glass fabric layer) adhered to the flashing membrane first side, a second reinforcing cloth (upper woven glass fabric layer) adhered to the flashing membrane second side.

It is well known in the through-wall flashing art to include wicking material on top of a flashing member in order to prevent debris from blocking the path of moisture. Col. 2, Lines 31-42 of Healy et al. teach this methodology. Healy et al. teaches placing a pervious synthetic fabric material on top of a flashing member to allow water to flow through the cloth a prevent debris from blocking flow. It therefore, it would have been obvious to one skilled in the art at the time of the invention to combine the prior art elements of York Flashing and Healy et al. according to known methods to yield predictable results.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANTHONY N. BARTOSIK whose telephone number is (571)270-3112. The examiner can normally be reached on M-F 7:30-5:00; E.D.T.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Richard E. Chilcot, Jr./
Supervisory Patent Examiner, Art Unit 3635

Anthony Bartosik
Examiner
Art Unit 3635
